

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

(1) UNITED STATES OF AMERICA for the)	
use and benefit of J. A. MANNING)	
CONSTRUCTION CO., INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 16-cv-588-CVE-FHM
)	
(1) BRONZE OAK, LLC; and)	
(2) MID-CONTINENT CASUALTY)	
COMPANY,)	
)	
Defendants.)	JURY TRIAL DEMANDED

COMPLAINT

Plaintiff J. A. Manning Construction Co., Inc. (“JAMCC”) for its causes of action against the referenced Defendants, states:

1. JAMCC is a corporation organized under the laws of the State of Oklahoma.
2. Defendant Bronze Oak, LLC (“Bronze Oak”) is a limited liability company organized under the laws of the State of Oklahoma.
3. Defendant Mid-Continent Casualty Company (“MCC”) is a surety company with its principal place of business in the State of Oklahoma.
4. This Court has jurisdiction over the subject matter of JAMCC’s Miller Act claim set forth in Count III by virtue of 28 U.S.C. § 1331 *et seq.*
5. This Court has jurisdiction over the subject matter of JAMCC’s claims set forth in Counts I and Count II by virtue of 28 U.S.C. § 1367, as those claims are so related to JAMCC’s Miller Act claim that they form part of the same case or controversy.

Count I – Breach of Contract

For its first cause of action, JAMCC incorporates paragraphs 1 through 5 herein by reference and further states:

6. On July 14, 2014, JAMCC and Bronze Oak entered into three related Subcontract Agreements all of which were part of the same road and bridge construction project (collectively the “Contracts”) pursuant to which JAMCC agreed to provide certain road and bridge construction work at the public improvement commonly known as Wickliffe Creek Bridge in Mayes County, Oklahoma (the “Project”).

7. Copies of the Contracts are attached hereto as Exhibit A.

8. Beginning August 2014 and through at least September 24, 2015, JAMCC performed all work required under the Contract and requested by Bronze Oak.

9. Pursuant to the Contract, Bronze Oak was to pay JAMCC the sum of \$752,025.40, but this base amount was reduced to \$727,314.00 due to change orders.

10. Although JAMCC performed its work in a workmanlike fashion and submitted pay applications or invoices in the aggregate sum of \$727,314.00, Bronze Oak only paid JAMCC a total of \$542,970.05, leaving an unpaid balance of \$184,343.95.

11. A copy of JAMCC’s accounting for the Contract is attached hereto as Exhibit B.

12. By refusing to pay the remaining balance owed under the Contract, Bronze Oak has breached the Contract.

13. JAMCC is therefore entitled to recover judgment against Bronze Oak in the sum of \$184,343.95, plus attorney’s fees, costs and interest accrued and accruing thereon.

Count II – Quantum Meruit and/or Unjust Enrichment

For its second cause of action, JAMCC incorporates paragraphs 1 through 13 herein by reference and further states:

14. JAMCC furnished labor and materials to Bronze Oak with an expectation that it would be fully paid.

15. Bronze Oak accepted JAMCC's work and would unfairly benefit therefrom if it does not fully pay JAMCC.

16. In the alternative to its breach of contract cause of action, JAMCC is entitled to recover judgment against Bronze Oak under the principles of *quantum meruit* and/or unjust enrichment for the value of its work.

17. JAMCC is therefore entitled to recover judgment against Bronze Oak in the sum of \$184,343.95, plus attorney's fees, costs and interest accrued and accruing thereon.

Count III – Claim Against Payment Bond Number 1010801

For its third cause of action, JAMCC incorporates paragraph 1 through 17 herein by reference and further states:

18. The labor and materials which JAMCC furnished under the Contract improved the Project and were essential for the construction thereof to be completed.

19. Because the Project is a federally-funded public work project, JAMCC was precluded from filing a lien against the underlying real property in question.

20. Pursuant to 40 U.S.C. § 3131, *et seq.*, Bronze Oak furnished a payment bond in favor of the United States of America in the penal sum of \$1,774,841.62 for the benefit of any unpaid laborers or materialmen on the Project (the "Bond").

21. A copy of the Bond, styled Bond Number 1010801, is attached hereto as Exhibit C.

22. JAMCC timely and properly perfected a claim against the Bond.

23. MCC is serving as the surety on the Bond and should therefore be required to appear herein and establish its position in this dispute, if any.

24. As a subcontractor which furnished valuable labor and materials to the Project for which it has not been fully paid, JAMCC is entitled to judgment *in rem* against the Bond in the sum of \$184,343.95, plus attorney's fees, costs and interest accrued and accruing.

WHEREFORE, Plaintiff J. A. Manning Construction Co., Inc. respectfully requests the Court to enter judgment as follows:

- A. *In personam* against Defendant Bronze Oak, LLC in the sum of \$184,343.95, plus attorney's fees, costs and interest accrued and accruing; and
- B. *In rem* against the Bond in the sum of \$184,343.95, plus attorney's fees, costs and interest accrued and accruing.

Respectfully submitted,

ROBINETT, SWARTZ & AYCOCK

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*Attorneys for Plaintiff United States
of America for the use and benefit of
J. A. Manning Construction Co., Inc.*

CERTIFICATE OF SERVICE

I certify that on September 8, 2016, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

I hereby certify that on September 8, 2016, I served the same document by:

☐ U.S. Postal Service ☒ In Person Delivery

☐ Courier Service ☐ E-Mail

☒ Certified Mail

on the following, who are not registered participants of the ECF system:

Bronze Oak, LLC
c/o Brent Page, Manager
15800 S. 193rd E. Avenue
Broken Arrow, Oklahoma 74014

Mid-Continent Casualty Company
c/o its registered service agent
Jim L. Pierce
1437 S. Boulder, #200
Tulsa, Oklahoma 74119

/s/ Charles R. Swartz